MONTANA LEGISLATIVE HISTORY

Chapter 399 1985

Bill H 396 S _____ Original bill & history ✓ C

H. Committee on Natural Resources S. Committee on Natural Resources

Hearing Date(s)	C	Hearing Date(s)	C
1-28	C	3-25	C
2-22	C		C
	C		C
	C	Date Out 3-25	C
Date Out 2-22	C		

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

4/24	TRANSMITTED TO GOVERNOR		
4/30	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 650 EFFECTIVE DATE: 7/01/85		

HB 395 INTRODUCED BY D. BROWN, PAVLOVICH
NO CIVIL LIABILITY OF PURVEYORS OF ALCOHOL FOR DAMAGE DONE BY CONSUMER

1/23	INTRODUCED		
1/23	REFERRED TO JUDICIARY		
1/31	HEARING		
2/04	COMMITTEE REPORT-BILL PASS AS AMENDED		
2/05	2ND READING PASS	76	21
2/06	3RD READING PASS	84	14
	TRANSMITTED TO SENATE		
2/07	REFERRED TO BUSINESS & INDUSTRY		
3/15	HEARING		
3/20	ADVERSE COMMITTEE REPORT AS AMENDED, BE NOT CONCURRED IN	34	11
	RETURNED TO HOUSE		
3/21	RECONSIDERATION		
	RETURNED TO SENATE		
3/27	REREFERRED TO BUSINESS & INDUSTRY		
3/27	TABLED IN COMMITTEE		

HB 396 INTRODUCED BY SPAETH, RAMIREZ, ET AL.
DNRC TO DETERMINE WHEN APPLICATION FOR WATER PERMIT NOT IN GOOD FAITH
BY REQUEST OF DEPT. OF NATURAL RESOURCES

1/23	INTRODUCED		
1/23	REFERRED TO NATURAL RESOURCES		
1/24	FISCAL NOTE REQUESTED		
1/28	HEARING		
1/31	FISCAL NOTE RECEIVED		
2/23	COMMITTEE REPORT-BILL DO PASS		
2/23	STATEMENT OF INTENT ATTACHED		
2/26	2ND READING PASS	95	0
2/27	3RD READING PASS	99	0
	TRANSMITTED TO SENATE		
3/05	REFERRED TO NATURAL RESOURCES		
3/25	HEARING		
3/25	COMMITTEE REPORT-BILL CONCURRED		
3/27	2ND READING CONCURRED	50	0
3/29	3RD READING CONCURRED	49	0
	RETURNED TO HOUSE		
4/04	SIGNED BY SPEAKER		
4/04	SIGNED BY PRESIDENT		
4/04	TRANSMITTED TO GOVERNOR		
4/08	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 399 EFFECTIVE DATE: 4/08/85		

HB 397 INTRODUCED BY JONES, ELLISON, ET AL.
REPEAL TENURE LAWS; PROVIDE FOR TERMINATION HEARING

HOUSE BILL NO. 396

INTRODUCED BY SPAETH, RAMIREZ, HOLLIDAY, HANSON, BOYLAN

BY REQUEST OF THE DEPARTMENT

OF NATURAL RESOURCES AND CONSERVATION

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION'S AUTHORITY TO DETERMINE THAT AN APPLICATION FOR A BENEFICIAL WATER USE PERMIT IS NOT IN GOOD FAITH OR DOES NOT SHOW A BONA FIDE INTENT TO APPROPRIATE WATER FOR A BENEFICIAL USE; AMENDING SECTION 85-2-310, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 85-2-310, MCA, is amended to read:

"85-2-310. Action on application. (1) The department shall grant, deny, or condition an application for a permit in whole or in part within 120 days after the last date of publication of the notice of application if no objections have been received and within 180 days if a hearing is held or objections have been received. However, in either case the time may be extended upon agreement of the applicant, or, in those cases where an environmental impact statement must be prepared or in other extraordinary cases, not more than 60 days upon order of the department. If the department orders the time extended, it shall serve a notice of the extension and the reasons therefor by certified mail upon the applicant and each person who has filed an objection as provided by 85-2-308.

(2) However, an application may not be approved in a modified form or upon terms, conditions, or limitations specified by the department or denied, unless the applicant is first granted an opportunity to be heard. If no objection is filed against the application but the department is of the opinion that the application should be approved in a modified form or upon terms, conditions, or limitations specified by it or that the application should be denied, the department shall prepare a statement of its opinion and the reasons therefor. The department shall serve a statement of its opinion by certified mail upon the applicant, together with a notice that the applicant may obtain a hearing by filing a request therefor within 30 days after the notice is mailed. The notice shall further state that the application will be modified in a specified manner or denied, unless a hearing is requested.

(3) The department may cease action upon an application for a permit and return it to the applicant when it finds that the application is not in good faith or does not show a bona fide intent to appropriate water for a beneficial use. An application returned for any of these

reasons shall be accompanied by a statement of the reasons for which it was returned, and there shall be no right to a priority date based upon the filing of the application. Returning an application pursuant to this subsection shall be deemed a final decision of the department.

(4) For all applications filed after July 1, 1973, the department shall find that an application is not in good faith or does not show a bona fide intent to appropriate water for a beneficial use if:

(a) an application is not corrected and completed as required by 85-2-302;

(b) the appropriate filing fee is not paid;

(c) the application does not document:

(i) a beneficial use of water;

(ii) the proposed place of use of all water applied for;

(iii) for an appropriation of 4,000 acre-feet a year or more and 5.5 cubic feet per second or more, a detailed project plan including, but not limited to, a reasonable time line for the completion of the project and the actual application of the water to a beneficial use, which may not exceed 10 years from the date of application, detailing when and how much water will be put to a beneficial use;

(iv) for appropriations not covered in subsection (4)(c)(iii), a general project plan stating when and how

much water will be put to a beneficial use; and

(v) if the water applied for is to be appropriated above that which will be used solely by the applicant or if it will be marketed by the applicant to other users, information detailing:

(A) each person who will use the water and the amount of water each person will use;

(B) the proposed place of use of all water by each person;

(C) the nature of the relationship between the applicant and each person using the water; and

(D) each firm contractual agreement for the specified amount of water for each person using the water; or

(d) the appropriate environmental impact statement fee, if any, is not paid as required by 85-2-124."

NEW SECTION. Section 2. Extension of authority. Any existing authority of the department of natural resources and conservation to make rules on the subject of the provisions of this act is extended to the provisions of this act.

NEW SECTION. Section 3. Applicability. This act applies retroactively, within the meaning of 1-2-109, to all applications filed after July 1, 1973.

NEW SECTION. Section 4. Severability. If a part of this act is invalid, all valid parts that are severable from

the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 5. Effective date. This act is effective on passage and approval.

-End-

STATE OF MONTANA

REQUEST NO. FNN216-85

F I S C A L N O T E

Form BD-15

In compliance with a written request received January 24 19 85, there is hereby submitted a Fiscal Note for H.B. 396 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA). Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

BRIEF DESCRIPTION:

House Bill 396 proposes to clarify the Department of Natural Resources and Conservation's authority to determine that an Application for Beneficial Water Use Permit is not in good faith or does not show a bona fide intent to appropriate water for a beneficial use. It is the intent of this Bill to apply the changes to all permit applications filed after July 1, 1973, for which no permit has been issued.

ASSUMPTIONS:

1. Existing staff will assume any increased work load.
2. Existing forms will require modification.
3. Department staff will attend the three hearings.

FISCAL IMPACT:

	1986			1987		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Differen
Revenues	-0-	-0-	-0-	-0-	-0-	-0-
Expenditures:						
Operations	-0-	$ 1,000	$ 1,000	-0-	$ 500	$ 500
General Fund	-0-	$ 1,000	$ 1,000	-0-	$ 500	$ 500

AFFECT ON COUNTY OR OTHER LOCAL REVENUE OR EXPENDITURES:

NONE

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

The proposed change would actually bring about a monetary savings to the State by reducing potential additional costs of rule-making and court litigation.

David L Hunter

BUDGET DIRECTOR
Office of Budget and Program Planning

Date: Jan 30, 1985

HB 396

FN4:I/2-3

(To be kept current -- post bills when entering being heard or leaving committee.) Form CS-32

STATUS SHEET

49TH LEGISLATIVE SESSION

COMMITTEE ON NATURAL RESOURCES

BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CONCURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CONCURRED IN DATE
HB 6	1/7/85	1/9/85	1/14/85			1/14/85			
HB 81	1/7/85	1/18/85	1/18/85	1/18/85					
HB 158	1/14/85	1/25/85 1/28/85							
HB 178	1/14/85	1/21/85	1/21/85	1/21/85					
HB 179	1/15/85	1/21/85							
HB 180	1/14/85	1/21/85	1/21/85	1/21/85					
HB 312	1/22/85	2/23 3/20							
HB 316	1/22/85	1/25/85	1/25/85	1/25/85					
HB 362	1/22/85	2/8 2/11	2/15/85			2/15/85			
HB 396	1/23/85	1/28/85	2/22/85	2/22/85					
HB 434	1/23/85	2/1/85	2/8/85			2/8/85			
HB 493	1/28/85	2/13/85	2/22/85			2/22/85			
HB 494	1/28/85	2/13/85	2/22/85			2/22/85			
HB 495	1/28/85	2/13/85	2/22/85			2/22/85			
HB 516	1/28/85	2/1 2/8	2/25/85			2/25/85			
HB 543	1/29/85	2/4/85	2/4/85	2/4/85					

Use a separate sheet for Senate, House Bills, and Resolutions

MINUTES OF THE MEETING
NATURAL RESOURCES COMMITTEE
MONTANA STATE
HOUSE OF REPRESENTATIVES

January 28, 1985

The meeting of the Natural Resources Committee was called to order by Chairman Dennis Iverson at 3:15 p.m. in Room 312-1 of the State Capitol.

ROLL CALL: All members were present except Rep. Garcia, who was excused.

HOUSE BILL 396: Rep. Gary Spaeth introduced HB 396, which he sponsored at the request of the Dept. of Natural Resources and Conservation. Rep. Spaeth said that under current Montana water law, there is no definition of speculation in reference to water use applications. He said the legislature should determine what constitutes a speculative application for water use, and clearly define speculation. He said speculative applications tie up the state's water allocation process, and should be avoided.

Larry Fasbender, director of DNRC, supported HB 396, saying the measure would clarify the means by which DNRC could reject an application for water allocation by determining whether the application was speculative.

Dave Donaldson of the Montana Association of Conservation Districts said that group supports HB 396.

No opponents spoke against HB 396.

Rep. Ream asked if the issue of speculative applications had been considered by the select committee on water marketing. Rep. Iverson said that some provisions on speculative applications would be a part of the proposed water marketing bill, and recommended that the committee hold action on HB 396 until the water marketing bill is introduced. The committee agreed to delay further action.

Rep. Spaeth closed by saying that the provisions of HB 396 are necessary, and should be adopted whether the water marketing bill is approved or rejected by the House.

HOUSE BILL 158: Rep. Raney moved Do Not Pass on HB 158 (discussed in committee 1/25/85). Rep. Harp substituted a motion to table HB 158, which was unanimously carried.

There being no further business before the committee, the meeting was adjourned at 3:30 p.m.

DENNIS IVERSON, Chairman

DAILY ROLL CALL

HOUSE NATURAL RESOURCES COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date January 28, 1985

NAME	PRESENT	ABSENT	EXCUSED
IVERSON, Dennis (Chairman)	X		
KADAS, Mike (Vice-Chairman)	X		
ADDY, Kelly	X		
ASAY, Tom	X		
COBB, John	X		
DRISCOLL, Jerry	X		
GARCIA, Rodney			✓
GRADY, Edward	X		
HARP, John	X		
JONES, Tom	X		
KRUEGER, Kurt	X		
MILES, Joan	X		
MOORE, Janet	X		
O'HARA, Jesse	X		
PETERSON, Mary Lou	X		
RANEY, Bob	X		
REAM, Bob	X		
SMITH, Clyde	X		

VISITOR'S REGISTER

HOUSE NATURAL RESOURCES COMMITTEE

BILL HOUSE BILL 396 DATE JANUARY 28, 1985

SPONSOR GARY SPAETH

NAME	RESIDENCE	REPRESENTING	SUP-PORT	OP-POSE
Bill Kaufmann	Helena	DNRC	✓	
Larry Fasbender	Lodge	DNRC	✓	
Dave Donaldson	Helena	MT Assoc. Cons. Dist.	✓	
Gary Spaeth	HD 84		✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

FORM CS-33

MINUTES OF THE MEETING
NATURAL RESOURCES COMMITTEE
MONTANA STATE
HOUSE OF REPRESENTATIVES

February 22, 1985

The meeting of the Natural Resources Committee was called to order by Chairman Dennis Iverson at 5:15 p.m. in Room 312-1 of the State Capitol.

ROLL CALL: All members of the committee were present.

HOUSE BILL 892: Rep. Hal Harper, District 44, introduced HB 892, which he sponsored. He explained that HB 892 addresses the problem of loss of riparian habitat by allowing landowners a property tax exemption on lands maintained as wetlands and riparian habitat. Upon application of the landowner, he said, a strip of 100 feet of land along streambanks can be removed from tax liability if it is maintained within the provisions of the law. The bill contains a penalty for not reporting incompatible use on land which is receiving the tax exemption, he said. Rep. Harper said HB 892 would fit in nicely with Soil Conservation Service streambank protection and stabilization activities.

Janet Decker-Hess, president of the Montana chapter of the American Fisheries Society, endorsed HB 892 on behalf of that group. She noted that the AFS has been involved with the bill since 1982, and work on HB 892 has been the chapter's most important undertaking. She noted the benefits of maintaining riparian lands for shade, cover and habitat. She said the loss to the state from the tax exemption is very small compared to the expense incurred when lack of riparian protection results in erosion. A copy of her testimony is attached hereto as Exhibit 1. She also read a letter from Lewis Myers, a wildlife biologist from Dillon, elaborating on the importance of stable riparian lands for water quality and habitat. A copy of Mr. Myers' letter is attached as Exhibit 2.

Hal Price represented the Montana Wildlife Federation in support of HB 892, saying riparian habitat is important to sportsmen, and the method proposed in the bill appears to be cost-effective.

Donald R. Reichmuth, a professional engineer, said many problems with flooding and soil loss could be prevented if vegetative buffers are maintained along streambanks. He supported HB 892 as a means of protecting these banks. A copy of his testimony is attached as Exhibit 3.

Greg L. Munther, a fisheries consultant from Missoula, said HB 892 encourages landowner cooperation in an important effort to protect streambanks and habitat.

HOUSE BILL 676: Rep. Kadas moved DO PASS on HB 676, and Rep. Ream moved the amendments prepared by the sponsor (Gene Donaldson) to allow for funding through the junk vehicle statute. Rep. Miles commented that the junk vehicle fund is an appropriate source from which to obtain money for the program set up under HB 676.

Rep. Raney noted that during the hearing on HB 676, the committee discussed whether the bill should be amended to include underground pipelines attached to above-ground storage systems. He suggested that the bill be held until the EQC staff could prepare such an amendment. Rep. Kadas agreed, and withdrew his DO PASS motion.

HOUSE BILL 396: Rep. Ream moved DO PASS on HB 396, and that motion was unanimously approved. Rep. Ream then moved the statement of intent, which was also approved unanimously.

HOUSE BILL 493: A sheet of amendments proposed by Rep. Ramirez, sponsor of HB 493, designed to avoid a possible arbitrage problem noted at the hearing, was distributed. Arbitrage occurs when an entity purchases bonds in one market, and silmultaneously invests those at a higher rate in a different market, in order to obtain a profit on the price difference. When a tax-exempt entity commits arbitrage, that tax-exempt status is lost. Rep. Addy noted that the amendments proposed to alleviate this bonding rpoblem called for a majority vote by the legislature. He said that because the purchase of bonds by the state is a constitutional issue, the amendments should require a 2/3 vote of both houses of the legislature. He moved passage of the suggested amendments to HB 493, with the change from a majority vote to a 2/3 vote.

Rep. Raney called attention to the provision that infrastructure meony be applied to "other public improvements and undertakings" and questioned whether the legislature should grant that authority to use those funds for unspecified projects.

Rep. Kadas said he too was concerned about "undertakings," additing that the phrase could mean that the infrastructure funds would be applied to the general fund budget.

On a voice vote, the committee adopted the amendments to the bill, with Reps. Moore and Peterson voting no.

Rep. Addy moved DO PASS AS AMENDED On HB 493.

Rep. Miles said she had a problem with the structure of all three bills (493, 494 & 495). The bills, she said, contain no provision for equity, and no guarantee of how funds will be used. "We're kidding ourselves to think local governments are getting the money," she said.

STANDING COMMITTEE REPORT

February 22 19 85

MR. SPEAKER:

We, your committee on NATURAL RESOURCES

having had under consideration HOUSE Bill No. 396

FIRST reading copy (WHITE)
color

AN ACT CLARIFYING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION'S AUTHORITY TO DETERMINE THAT AN APPLICATION FOR A BENE FICIAL WATER USE PERMIT IS NOT IN GOOD FAITH

Respectfully report as follows: That HOUSE Bill No. 396

DO PASS

STATEMENT OF INTENT ATTACHED

Chairman.

STATE PUB. CO.
Helena, Mont.

COMMITTEE SECRETARY

STATEMENT OF INTENT ON HOUSE BILL 396

A statement of intent is desirable for this bill because it authorizes the board of natural resources and conservation to make rules on the new material enacted in the bill. The rules would implement section 1 of the bill, which establishes criteria for the department of natural resources and conservation to reject an application for a beneficial water use permit that is not in good faith or does not show a bona fide intent to appropriate water.

The intent is to adopt those rules necessary to implement the criteria listed in section 1. Because the criteria are specific, the rulemaking authority would be limited to adopting rules:

(1) defining a proposed place of use;

(2) prescribing the contents of a detailed project plan and of a general project plan;

(3) defining reasonable time lines, not to exceed 10 years, for completion of projects; and

(4) prescribing the detailed information to implement criteria relative to applications for water use above that amount of water which will be used solely by the applicant.

.....
Chairman.

STATE PUB. CO.
Helena, Mont.

STATUS SHEET

Natural Resources COMMITTEE

49th LEGISLATURE

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
HB96	OIL AND GAS OPERATOR MUST PAY INTEREST	2/5	HOLLIDAY	2/13 3/6	BE CONCURRED IN	3/6
HB232	WATER AND/OR SEWER DISTRICT COMM'R ELECTION	2/11	BARDAN-OUVE	3/6	BE CONCURRED IN	3/6
HB336	REMOVE ANNUAL REPORTING REQUIRE-MENT OF NW PLANNING COUNCIL	2/8	QUILICI	3/6	BE CONCURRED IN	3/6
HB396	DNRC TO DETERMINE WHEN APPLICATION FOR WATER PERMIT NOT IN GOOD FAITH	3/5	SPAETH	3/25	BE CONCURRED IN	3/25

STATEMENT OF INTENT

HOUSE BILL 396

House Natural Resources Committee

A statement of intent is desirable for this bill because it authorizes the board of natural resources and conservation to make rules on the new material enacted in the bill. The rules would implement section 1 of the bill, which establishes criteria for the department of natural resources and conservation to reject an application for a beneficial water use permit that is not in good faith or does not show a bona fide intent to appropriate water.

The intent is to adopt those rules necessary to implement the criteria listed in section 1. Because the criteria are specific, the rulemaking authority would be limited to adopting rules:

(1) defining a proposed place of use;

(2) prescribing the contents of a detailed project plan and of a general project plan;

(3) defining reasonable time lines, not to exceed 10 years, for completion of projects; and

(4) prescribing the detailed information to implement criteria relative to applications for water use above that amount of water which will be used solely by the applicant.

THIRD READING

HB 396

HOUSE BILL NO. 396

INTRODUCED BY SPAETH, RAMIREZ, HOLLIDAY, HANSON, BOYLAN

BY REQUEST OF THE DEPARTMENT

OF NATURAL RESOURCES AND CONSERVATION

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION'S AUTHORITY TO DETERMINE THAT AN APPLICATION FOR A BENEFICIAL WATER USE PERMIT IS NOT IN GOOD FAITH OR DOES NOT SHOW A BONA FIDE INTENT TO APPROPRIATE WATER FOR A BENEFICIAL USE; AMENDING SECTION 85-2-310, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 85-2-310, MCA, is amended to read:

"85-2-310. Action on application. (1) The department shall grant, deny, or condition an application for a permit in whole or in part within 120 days after the last date of publication of the notice of application if no objections have been received and within 180 days if a hearing is held or objections have been received. However, in either case the time may be extended upon agreement of the applicant, or, in those cases where an environmental impact statement must be prepared or in other extraordinary cases, not more than 60 days upon order of the department. If the department orders the time extended, it shall serve a notice of the extension and the reasons therefor by certified mail upon the applicant and each person who has filed an objection as provided by 85-2-308.

(2) However, an application may not be approved in a modified form or upon terms, conditions, or limitations specified by the department or denied, unless the applicant is first granted an opportunity to be heard. If no objection is filed against the application but the department is of the opinion that the application should be approved in a modified form or upon terms, conditions, or limitations specified by it or that the application should be denied, the department shall prepare a statement of its opinion and the reasons therefor. The department shall serve a statement of its opinion by certified mail upon the applicant, together with a notice that the applicant may obtain a hearing by filing a request therefor within 30 days after the notice is mailed. The notice shall further state that the application will be modified in a specified manner or denied, unless a hearing is requested.

(3) The department may cease action upon an application for a permit and return it to the applicant when it finds that the application is not in good faith or does not show a bona fide intent to appropriate water for a beneficial use. An application returned for any of these

reasons shall be accompanied by a statement of the reasons for which it was returned, and there shall be no right to a priority date based upon the filing of the application. Returning an application pursuant to this subsection shall be deemed a final decision of the department.

(4) For all applications filed after July 1, 1973, the department shall find that an application is not in good faith or does not show a bona fide intent to appropriate water for a beneficial use if:

(a) an application is not corrected and completed as required by 85-2-302;

(b) the appropriate filing fee is not paid;

(c) the application does not document:

(i) a beneficial use of water;

(ii) the proposed place of use of all water applied for;

(iii) for an appropriation of 4,000 acre-feet a year or more and 5.5 cubic feet per second or more, a detailed project plan including, but not limited to, a reasonable time line for the completion of the project and the actual application of the water to a beneficial use, which may not exceed 10 years from the date of application, detailing when and how much water will be put to a beneficial use;

(iv) for appropriations not covered in subsection (4)(c)(iii), a general project plan stating when and how

much water will be put to a beneficial use; and

(v) if the water applied for is to be appropriated above that which will be used solely by the applicant or if it will be marketed by the applicant to other users, information detailing:

(A) each person who will use the water and the amount of water each person will use;

(B) the proposed place of use of all water by each person;

(C) the nature of the relationship between the applicant and each person using the water; and

(D) each firm contractual agreement for the specified amount of water for each person using the water; or

(d) the appropriate environmental impact statement fee, if any, is not paid as required by 85-2-124."

NEW SECTION. Section 2. Extension of authority. Any existing authority of the department of natural resources and conservation to make rules on the subject of the provisions of this act is extended to the provisions of this act.

NEW SECTION. Section 3. Applicability. This act applies retroactively, within the meaning of 1-2-109, to all applications filed after July 1, 1973.

NEW SECTION. Section 4. Severability. If a part of this act is invalid, all valid parts that are severable from

the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 5. Effective date. This act is effective on passage and approval.

-End-

MINUTES OF THE MEETING
SENATE NATURAL RESOURCES COMMITTEE
MONTANA STATE SENATE
March 25, 1985

The twenty-fifth meeting of the Senate Natural Resources Committee was called to order by Chairman Dorothy Eck on March 25, 1985, Room 405, State Capitol Building.

ROLL CALL: All members of the Senate Natural Resources Committee were present.

ACTION ON HJR35: Senator Christiaens moved HJR35 BE CONCURRED IN. The motion carried.

ACTION ON HJR27: Senator Gage moved HJR27 NOT BE CONCURRED IN. The motion carried with Senator Fuller abstaining and Senators Eck, Weeding and Mohar voting in opposition.

CONSIDERATION OF HB750: Representative Bardanouve, sponsor of HB750, introduced Mr. Larry Fasbender, Department of Natural Resources and Conservation (hereafter DNRC).

PROPONENTS: Mr. Larry Fasbender, Director of DNRC, submitted written testimony (Exhibit 1) in favor of HB750.

Mr. Russ Brown, representing Northern Plains Resource Council, submitted written testimony (Exhibit 2) in favor of HB750. Mr. Brown proposed changing "uncontested" to "contested" on page 5, line 4.

Mr. Dan Heinz, representing the Montana Wildlife Federation, supports HB750 with Mr. Brown's proposed amendment.

Mr. Wilbur Rehman, former director of the Montana Wildlife Federation, feels DNRC should be able to negotiate with the federal government. Mr. Rehman had experiences working with the federal government on the Kootenai Falls project and stated working with a federal agency on a project of this size is difficult. Mr. Rehman urged the committee for a do pass recommendation, so the citizens of Montana will be adequately represented in the federal process.

Mr. Don Reed, representing the Environmental Information Center, testified that Montana does not recognize total preemption with regard to the Facility Siting Act, and needs to have control over facilities like Kootenai Falls. Mr. Reed feels Montana's evaluation of this project was much better than the federal government's and contained more information. Mr. Reed supports HB750 and the amendment proposed by Mr. Brown.

Senator Weeding questioned how people's concerns would be addressed. Mr. Zimmerman informed the committee the State would be able to participate in the licensing proceeding as they have always done. Mr. Zimmerman feels HB750 would not make a difference.

There being no further questions from the committee, Representative Bardanouve closed the hearing by stating the people of Montana want to be a part of the federal process.

There being no further questions from the committee, the hearing on HB750 was closed.

CONSIDERATION OF HB396: Representative Spaeth, sponsor of HB396, is introducing this bill at the request of the DNRC. The DNRC wants authority to determine when an application for water rights is not made in good faith. Representative Spaeth feels if the DNRC does not make this determination, it will have to be done by the courts.

PROPONENTS: Mr. Larry Fasbender, representing DNRC, submitted written testimony (Exhibit 4) in favor of HB396.

Mr. Russ Brown, representing Northern Plains Resource Council, supports HB396.

There being no further proponents and no opponents, the hearing was opened to questions from the committee.

Chairman Eck questioned what types of applications to appropriate water would be deemed speculative by the DNRC. Mr. Gary Fritz, DNRC, stated the DNRC would evaluate closely applications which want to take water out of state or tie up water for long periods of time. These applications are often not submitted in good faith.

Senator Gage inquired why the DNRC could not turn down any application submitted which would not "beneficially" use water. Representative Spaeth stated speculation adversely affects those who wish to use the water beneficially, but because there are proper procedures which the DNRC must adhere to, the DNRC often cannot limit speculation.

There being no further questions from the committee, the hearing on HB396 was closed.

CONSIDERATION OF HB859: Mr. Don MacIntyre introduced HB859 at the request of the sponsor, Representative Ramirez. HB859

would give the DNRC the ability to certify to the district courts certain matters dealing with adjudication of certain rights. HB859 provides that in a situation where the applicant or objector determines there are legal issues with the water right which need to be addressed, they may send that issue to the district court for a determination. HB859 would apply to any case pending before the DNRC at the present time, but would exempt cases which have already been submitted for a proposal for decision. Mr. MacIntyre submitted a proposed amendment (Exhibit 5) for the committee's consideration.

PROPONENTS: Mr. Ted Doney, representing the Montana Water Development Association, supports HB859 with the proposed amendment. Mr. Doney feels the proposed amendment is very important because without the amendment, every changed application proceeding would go to court.

Mr. Don MacIntyre, representing DNRC, supports HB859 and the proposed amendment.

There being no further proponents, no opponents and no questions from the committee, the hearing on HB859 was closed.

ACTION ON HB859: Senator Fuller moved the amendment proposed by Mr. MacIntyre to HB859 BE ADOPTED. The motion carried. Senator Fuller moved HB859 BE CONCURRED IN AS AMENDED. The motion carried.

ACTION ON HB638: Senator Halligan moved HB638 BE CONCURRED IN. The motion carried.

ACTION ON HB396: Senator Gage moved HB396 BE CONCURRED IN. The motion carried.

ACTION ON HB912: Mr. Thompson submitted a proposed amendment to HB912 for the committee's consideration (Exhibit 6). Senator Shaw moved the proposed amendment BE ADOPTED. The motion carried. Senator Shaw moved HB912 BE CONCURRED IN AS AMENDED. The motion carried.

FURTHER CONSIDERATION OF HJR25: Senator Mohar stated there was broad support for this bill, even though it is generally recognized there is a problem and the delegation has already been asked to resolve the issue. Senator Mohar feels passage of HJR25 will not add any incentive for resolving the wilderness area issue. Chairman Eck wondered if by not passing HJR25, the delegation may determine the legislature is not concerned about designating wilderness areas.

HB NO. 396

TESTIMONTY OF THE DEPARTMENT OF NATURAL
RESOURCES AND CONSERVATION

BY REQUEST OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION: A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION'S AUTHORITY TO DETERMINE THAT AN APPLICATION FOR A BENEFICIAL WATER USE PERMIT IS NOT IN GOOD FAITH OR DOES NOT SHOW A BONA FIDE INTENT TO APPROPRIATE WATER FOR A BENEFICIAL USE; AMENDING SECTION 85-2-31, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

The Department of Natural Resources and Conservation is proposing through this bill amendment to have the authority of the Department clarified as to the determination of a non-bona fide or speculative application to appropriate water for a beneficial use.

The present law simply provides that, "The department may cease action upon an application for a permit and return it to the applicant when it finds that the application is not in good faith or does not show a bona fide intent to appropriate water for a beneficial use."

A problem with the present law is that it gives no criteria or guidance to the Department (nor to the applicant) to determine if and when an application is non-bona fide or speculative and not in good faith. Due to the lack of specific criteria in the

SENATE NATURAL RESOURCES COMMITTEE
EXHIBIT NO. 4
DATE 032585
BILL NO. HB396

present law on which to judge non-bona fide or speculative applications, the Department must turn to and rely on its interpretation of case law.

The proposed criteria as set forth on pages 3 and 4 of this bill is the result of legal research of existing case law by the Department on this subject matter. The proposed criteria is based on existing case law and is the criteria the Department would rely on in the absence of specific legislative direction.

This proposed amendment allows the Legislature to set the criteria it feels is important for the Department to rely on when making decisions on non-bona fide or speculative applications.

It is assumed that the permit processing activity would remain about the same with or without this amendment, except that the additional costs of resolving specific problems with non-bona fide or speculative applications would cost considerably more in rule-making and court litigation without this amendment. This amendment would actually bring about a monetary savings to the state in the long run.

STANDING COMMITTEE REPORT

MARCH 25 1985

MR. PRESIDENT

We, your committee on NATURAL RESOURCES

having had under consideration HOUSE BILL No. 396

THIRD (GAGE) reading copy (BLUE color)

DNRC TO DETERMINE WHEN APPLICATION FOR WATER PERMIT NOT IN GOOD FAITH

Respectfully report as follows: That HOUSE BILL No. 396

BE CONCURRED IN

XXXXXX

XXXXXXXXXX

SENATOR DOROTHY ECK Chairman.

STATEMENT OF INTENT

HOUSE BILL 396

House Natural Resources Committee

A statement of intent is desirable for this bill because it authorizes the board of natural resources and conservation to make rules on the new material enacted in the bill. The rules would implement section 1 of the bill, which establishes criteria for the department of natural resources and conservation to reject an application for a beneficial water use permit that is not in good faith or does not show a bona fide intent to appropriate water.

The intent is to adopt those rules necessary to implement the criteria listed in section 1. Because the criteria are specific, the rulemaking authority would be limited to adopting rules:

(1) defining a proposed place of use;

(2) prescribing the contents of a detailed project plan and of a general project plan;

(3) defining reasonable time lines, not to exceed 10 years, for completion of projects; and

(4) prescribing the detailed information to implement criteria relative to applications for water use above that amount of water which will be used solely by the applicant.

REFERENCE BILL
HB 396

HOUSE BILL NO. 396

INTRODUCED BY SPAETH, RAMIREZ, HOLLIDAY, HANSON, BOYLAN

BY REQUEST OF THE DEPARTMENT

OF NATURAL RESOURCES AND CONSERVATION

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION'S AUTHORITY TO DETERMINE THAT AN APPLICATION FOR A BENEFICIAL WATER USE PERMIT IS NOT IN GOOD FAITH OR DOES NOT SHOW A BONA FIDE INTENT TO APPROPRIATE WATER FOR A BENEFICIAL USE; AMENDING SECTION 85-2-310, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 85-2-310, MCA, is amended to read:

"85-2-310. Action on application. (1) The department shall grant, deny, or condition an application for a permit in whole or in part within 120 days after the last date of publication of the notice of application if no objections have been received and within 180 days if a hearing is held or objections have been received. However, in either case the time may be extended upon agreement of the applicant, or, in those cases where an environmental impact statement must be prepared or in other extraordinary cases, not more than 60 days upon order of the department. If the department orders the time extended, it shall serve a notice of the extension and the reasons therefor by certified mail upon the applicant and each person who has filed an objection as provided by 85-2-308.

(2) However, an application may not be approved in a modified form or upon terms, conditions, or limitations specified by the department or denied, unless the applicant is first granted an opportunity to be heard. If no objection is filed against the application but the department is of the opinion that the application should be approved in a modified form or upon terms, conditions, or limitations specified by it or that the application should be denied, the department shall prepare a statement of its opinion and the reasons therefor. The department shall serve a statement of its opinion by certified mail upon the applicant, together with a notice that the applicant may obtain a hearing by filing a request therefor within 30 days after the notice is mailed. The notice shall further state that the application will be modified in a specified manner or denied, unless a hearing is requested.

(3) The department may cease action upon an application for a permit and return it to the applicant when it finds that the application is not in good faith or does not show a bona fide intent to appropriate water for a beneficial use. An application returned for any of these

reasons shall be accompanied by a statement of the reasons for which it was returned, and there shall be no right to a priority date based upon the filing of the application. Returning an application pursuant to this subsection shall be deemed a final decision of the department.

(4) For all applications filed after July 1, 1973, the department shall find that an application is not in good faith or does not show a bona fide intent to appropriate water for a beneficial use if:

(a) an application is not corrected and completed as required by 85-2-302;

(b) the appropriate filing fee is not paid;

(c) the application does not document:

(i) a beneficial use of water;

(ii) the proposed place of use of all water applied for;

(iii) for an appropriation of 4,000 acre-feet a year or more and 5.5 cubic feet per second or more, a detailed project plan including, but not limited to, a reasonable time line for the completion of the project and the actual application of the water to a beneficial use, which may not exceed 10 years from the date of application, detailing when and how much water will be put to a beneficial use;

(iv) for appropriations not covered in subsection (4)(c)(iii), a general project plan stating when and how

much water will be put to a beneficial use; and

(v) if the water applied for is to be appropriated above that which will be used solely by the applicant or if it will be marketed by the applicant to other users, information detailing:

(A) each person who will use the water and the amount of water each person will use;

(B) the proposed place of use of all water by each person;

(C) the nature of the relationship between the applicant and each person using the water; and

(D) each firm contractual agreement for the specified amount of water for each person using the water; or

(d) the appropriate environmental impact statement fee, if any, is not paid as required by 85-2-124."

NEW SECTION. Section 2. Extension of authority. Any existing authority of the department of natural resources and conservation to make rules on the subject of the provisions of this act is extended to the provisions of this act.

NEW SECTION. Section 3. Applicability. This act applies retroactively, within the meaning of 1-2-109, to all applications filed after July 1, 1973.

NEW SECTION. Section 4. Severability. If a part of this act is invalid, all valid parts that are severable from

the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 5. Effective date. This act is effective on passage and approval.

-End-